

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

* * * * *

PATRICIA DENHOF and RENEE
LeCLEAR,

Plaintiffs,

v

HON. GORDON QUIST
U.S. DISTRICT COURT JUDGE

FILE NO. 1:02-cv-0275

CITY OF GRAND RAPIDS,

Defendant.

Christine A. Yared (P37472)
Attorney for Plaintiff Renee LeClear
2096 Shiloh Point, S.E.
Grand Rapids, MI 49546
(616) 285-7940

Stuart N. Dowty (P34687)
Michael L. Pitt (P24429)
PITT, McGEHEE, PALMER, RIVERS &
GOLDEN, P.C.
Attorneys for Plaintiff Patricia Denhof
117 W. Fourth St., Ste. 200
Royal Oak, MI 48067
(248) 398-9800

Catherine M. Mish (PP52528)
City Attorney
Janice Fuller-Bailey (P30802)
Deputy City Attorney
Co-Counsel for Defendant
300 Monroe Avenue, N.W.
Grand Rapids, Michigan 49503
(616) 456-4026

Christopher K. Cooke (P35034)
Allan C. Vander Laan (P33893)
Andrew J. Brege (P71474)
Co-Counsel for Defendant
CUMMINGS, McCLOREY, DAVIS
& ACHO, P.L.C.
2851 Charlevoix Drive, SE, Suite 327
Grand Rapids, MI 49546
(616) 975-7470

MOTION TO CLARIFY OR MODIFY TERM OF JUDGMENT

NOW COMES the Defendant, CITY OF GRAND RAPIDS, by and through its counsel, CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C., and pursuant to ¶ 9 of the January 10, 2005 Judgment and Fed R. Civ. Proc. 5(b)(1), move this Honorable Court to modify or clarify the terms of said Judgment as follows:

1. Pursuant to the January 10, 2005 Judgments, both Plaintiffs have a continuing duty to mitigate their damages.

2. On December 15, 2008, Defendant's counsel sent Plaintiff LeClear's counsel a letter requesting that these mitigation documents be sent directly to Defendant's counsel. (Attached as Exhibit 1).

3. On January 9, 2009, Plaintiff LeClear's counsel responded, stating:

The Judgment specifically requires Ms. LeClear to either send or hand deliver her mitigation documents directly to the City Attorney's Office. (Attached as Exhibit 2).

4. The January 10, 2005 Judgments, at ¶ 5(e), state:

Plaintiff shall verify her earnings and benefits and re-employment efforts on a quarterly basis by submitting to the City copies of applications for employment completed and submitted to prospective employers.

5. Fed. R. Civ. Proc. 5(b)(1) requires that "[i]f a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party."

6. Plaintiff has read additional terms into the Judgment.

7. The Judgment does not "specifically require" Plaintiff to hand deliver the documents to the City Attorney's Office.

8. Defendant's counsel maintains an office in Grand Rapids. To alleviate any concern Plaintiff LeClear may have, she can "hand deliver" her documents to the Grand Rapids office.

9. Based on Defendant's efforts to avoid this Court's intervention and Plaintiff LeClear's counsel's response to those efforts, Defendant believes this Motion will be opposed Plaintiff LeClear.

10. Plaintiff Denhof has already submitted her mitigation documents to Defendant's counsel.

WHEREFORE, Defendant CITY OF GRAND RAPIDS, respectfully requests that this Honorable Court clarify or modify the terms of the January 10, 2005 Judgment to specifically require that Plaintiffs submit their mitigation documents to the Defendant City through its counsel, CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C. as required under Fed. R. Civ. Proc. 5(b)(1).

Respectfully submitted,

CUMMINGS, McCLOREY, DAVIS & ACHO, PLC
Attorneys for Defendant

DATED: January 21, 2009

/s/Andrew J. Brege

Andrew J. Brege (P71474)

abrege@cnda-law.com

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

* * * * *

PATRICIA DENHOF and RENEE
LeCLEAR,

Plaintiffs,

v

CITY OF GRAND RAPIDS,

Defendant.

HON. GORDON QUIST
U.S. DISTRICT COURT JUDGE

FILE NO. 1:02-cv-0275

Christine A. Yared (P37472)
Attorney for Plaintiff Renee LeClear
2096 Shiloh Point, S.E.
Grand Rapids, MI 49546
(616) 285-7940

Stuart N. Dowty (P34687)
Michael L. Pitt (P24429)
PITT, McGEHEE, PALMER, RIVERS &
GOLDEN, P.C.
Attorneys for Plaintiff Patricia Denhof
117 W. Fourth St., Ste. 200
Royal Oak, MI 48067
(248) 398-9800

Catherine M. Mish (PP52528)
City Attorney
Janice Fuller-Bailey (P30802)
Deputy City Attorney
Co-Counsel for Defendant
300 Monroe Avenue, N.W.
Grand Rapids, Michigan 49503
(616) 456-4026

Christopher K. Cooke (P35034)
Allan C. Vander Laan (P33893)
Andrew J. Brege (P71474)
Co-Counsel for Defendant
CUMMINGS, McCLOREY, DAVIS
& ACHO, P.L.C.
2851 Charlevoix Drive, SE, Suite 327
Grand Rapids, MI 49546
(616) 975-7470

BRIEF IN SUPPORT OF MOTION TO CLARIFY OR MODIFY TERM OF JUDGMENT

Under the terms of the January 10, 2005 Judgments entered by this Court, both Plaintiffs have a continuing duty to mitigate their front-pay damages. (See Judgments, Docket entries 453 & 454, at ¶ 5(e)). As part of this duty, Plaintiffs are required to submit documentation to Defendant City of Grand Rapids of their mitigation efforts. (*Id.*). Because there has been some concern over the mitigation efforts of Plaintiffs, on December 15, 2008, Defendant's counsel requested of Plaintiff LeClear that she submit her mitigation documentation directly to Defendant's counsel. (See Exhibit 1). Plaintiff LeClear's counsel responded by refusing to have her client submit the documentation to Defendant's counsel. (See Exhibit 2).

Pursuant to ¶ 9 of the Judgments, which states "[a]ny party may, from time to time, apply to clarify the terms of this Judgment to modify the Judgment or more effectively implement the terms and conditions of this Judgment," Defendant requests that the Judgment be clarified or modified to clearly stated that Plaintiff must submit her mitigation documentation to Defendant City through its counsel. Plaintiff LeClear has refused to do so, citing to the Judgment. However, the Judgment does not specifically state what Plaintiff LeClear would like it to state. Further, Fed. R. Civ. Proc. 5(b)(1) requires that where a party is represented by counsel, all documents to be served must be served on counsel, unless the Court specifically orders service on the party. The Judgment merely states that Plaintiff must submit to the City her mitigation documentation. There is no language specifically directing Plaintiff to by-pass the City's counsel.

Further, Plaintiff LeClear apparently has issue with sending the documents through the mail, and feels the need to have to submit them via "hand delivery." Defendant's counsel maintains an office here in Grand Rapids where Plaintiff LeClear is free to "hand deliver" or have her counsel "hand deliver" her documents. This will cause no burden on Plaintiff LeClear.

For the reasons stated in the Motion and this accompanying Brief in Support, Defendant City of Grand Rapids respectfully requests that this Honorable Court clarify or modify the terms of the January 10, 2005 Judgment to specifically require Plaintiffs to submit their mitigation documents to the City through its counsel, CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C. as required under Fed. R. Civ. Proc. 5(b)(1).

Respectfully submitted,

CUMMINGS, McCLOREY, DAVIS & ACHO, PLC
Attorneys for Defendant

DATED: January 21, 2009

/s/Andrew J. Brege

Andrew J. Brege (P71474)

abrege@cnda-law.com